



**THE OMBUDSMAN FOR ACADEMIC ETHICS AND PROCEDURES OF
THE REPUBLIC OF LITHUANIA**

**DECISION
ON THE VIOLATIONS OF ACADEMIC ETHICS AND PROCEDURES COMMITTED BY THE
COMMISSION OF ETHICS OF EMPLOYEES AND STUDENTS OF ŠIAULIAI UNIVERSITY**

25 June 2018 No SP-4

Vilnius

Following paragraph 1 of Article 17 of the Republic of Lithuania Law on Higher Education and Research and subparagraph 1 of paragraph 13 of the Statute of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania approved by the Resolution No XI-1583 of the Seimas of the Republic of Lithuania of 15 September 2011 “On the Establishment of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania and the Approval of the Statute of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania” (hereinafter referred to as the “Statute”) and having examined the request of I. P. (hereinafter referred to as the “Applicant”)¹ “to examine the decisions in respect of the [Applicant] adopted by the Commission of Ethics of Employees and Students of Šiauliai University” (hereinafter referred to as the “notification”) received on 21 May 2018 by the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania and having carried out an investigation, the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter referred to as the “Ombudsman”)

has determined the following:

The Applicant addressed the Ombudsman notifying that as of 2017 D. R., the employee of Šiauliai University (hereinafter referred to as “ŠU”), “has made different accusations, has constantly persecuted him and totally controlled him and damaged the [Applicant’s] business (professional) reputation. This is evidenced by regular letters of the [employee D. R.] to the rector of the University, the Chairman of the Council, external institutions <...>, the Commission of Ethics of Employees and Students of Šiauliai University [hereinafter referred to as the “Commission of Ethics”]”. The Applicant has pointed out in the notification that the employee applied to the Commission of Ethics by 30 October 2017 letter and 1 February 2018 letter with the request to evaluate the Applicant’s actions. He has also stated that on 6 March 2018 the Applicant himself applied to the Commission of Ethics for evaluation of the actions of the employee D. R.

By the notification the Applicant has requested the Ombudsman to evaluate if:

“1. if the [Commission of Ethics] **has the powers to evaluate** the violations of the **rules of professional ethics for internal auditors** of the public legal entity which possesses, uses and disposes of the assets owned by the State and municipality.

¹ For the purposes of the text of the decision of the Ombudsman, the “Applicant” is given a noun of masculine gender without linking it to the sex of the applicant.

2. if the [decision] adopted on 29 November 2017 by the [Commission of Ethics] **in respect of the [Applicant] is fair.**

3. if the [Commission of Ethics] **has not breached** the requirements of **subparagraph 33 of paragraph V** of the Regulations of the Commission of Ethics of Employees and Students of Šiauliai University providing for that “the Commission shall also not examine notifications or information concerning possible violations of procedures at the higher education and research institution” by accepting 1 February 2018 letter of the [employee D. R.] and examining possible violations of procedures specified in it

4. if by **13 March 2018 decision** <...> the [Commission of Ethics] **does not encourage further unlawful and unreasonable accusations of [D. R.] against the [Applicant].**

5. if the **decisions** of 13 April 2018 <...> and 15 May 2018 <...> adopted by the [Commission of Ethics] **are lawful** <...>.

Paragraph 1 of Article 17 of the Law on Higher Education and Research (hereinafter referred to as the “LHER”) provides for that the Ombudsman shall be a state officer who examines complaints, notifications and, on his own initiative, conducts investigations regarding the violation of academic ethics and procedures established in the codes of academic ethic of higher education and research institutions. Neither the LHER nor the Regulations of the Office establish the Ombudsman’s competence to examine complaints concerning lawfulness of the decisions taken by the commission of academic ethics or another dispute examination commission of the respective higher education and research institution under appeal.

Furthermore, it is to be noted that the Ombudsman has the right to examine complaints, notifications and, on his own initiative carry out investigations regarding only possible violations of procedures established in the codes of academic ethic of the respective higher education and research institution.

In the given case, it is to be noted that the Regulations of the Commission of Ethics is an internal legal act of the higher education and research institution regulating the work and procedures of the Commission of Ethics; therefore, following the legal acts currently in force, the Ombudsman cannot examine and evaluate possible violations of the procedures of the Commission of Ethics established in the Regulations of the Commission of Ethics of Employees and Students of ŠU.

In the light of the above, the Ombudsman has noted that further the notification shall be examined within the limits of his competence; therefore, paragraphs 2-5 formulated by the Applicant shall not be examined and evaluated.

When requesting to evaluate if the Commission of Ethics “has the powers to evaluate the **violations of the rules of professional ethics for internal auditors** of the public legal entity which possesses, uses and disposes of the assets owned by the State and municipality” (hereinafter referred to as the “Rules of Professional Ethics for Internal Auditors”), the Applicant furnished the Ombudsman with 29 November 2017 decision the introductory part of which states that the Commission of Ethics has examined the “request for evaluation of [possible] conflict of public and private interests of the [Applicant] and failure to comply with the Rules of Professional Ethics for [Internal] Auditors by the [Applicant]”. The Commission of Ethics adopted a decision on examination of the received request on the basis of paragraph 1.5.3 of the Code of Ethics of ŠU which “defines the concept of the community, i.e. “the community shall mean lecturers, researchers, administration, students and other employees ensuring the activities of the University” and paragraph 2.2 which

obliges the Applicant to “respect the common interests of the University and, where possible, contribute to achievement of the objectives of the University”. The Commission of Ethics in its decision has noted that “following paragraph 5.8 of the Code of Ethics of Šiauliai University, “the commission shall not examine notifications or information concerning possible violations of procedures in the higher education and research institution”, [therefore] it distances itself from the procedural violations set out in the notification”. Having examined the collected information, the Commission of Ethics in its decision has stated that the Applicant’s “actions breach:

2.1 paragraphs <...> of the Rules of Professional Ethics of [Internal] Auditors <...>.

2.2. part of paragraph 2.2.4 of the Code of Ethics of [ŠU] (approved by 16 December 2015 decision No 4 of the meeting of the Senate of ŠU (minutes No SP-09)) “where the issue of financing, career of the person himself, family member or another related person, imposition of a penalty or provision of incentives believing that the decision may be biased”.

Paragraph 5.2 of the Code of Ethics of [ŠU] (approved by 16 December 2015 decision No 4 of the meeting of the Senate of ŠU (minutes No SP-09)) provides for that “supervision of the Code of Ethics shall be carried out by the Commission of Ethics approved by the Senate <...> in accordance with the provisions of the Code of Ethics. Paragraph 5.4 of the Code of Ethics provides for that “the Commission shall work in accordance with the operational rules of the Commission of Ethics and the Code of Ethics” and paragraph 5.8 sets forth that “the Commission shall not examine <...> notifications or information concerning possible violations of procedures in the higher education and research institution.”

29 November 2017 decision of the Commission of Ethics provided by the Applicant suggests that although the Commission of Ethics has drawn attention to paragraph 5.8 of the Code of Ethics and stated that “it distances itself from the procedural violations set out in the notification”; however, in addition to the violation of the code of academic ethics, it stated in its decision that “the [Applicant’s] actions breach paragraphs <...> of the Rules of Professional Ethics of [Internal] Auditors <...>.”²

When examining possible violations of academic ethics, not only the codes of academic ethics but also the laws or other legal acts of the Republic of Lithuania must be taken into account. Mentioning of the relevant legal acts in the decision adopted by the commission of academic ethics or another dispute resolution commission of the respective higher education and research institution should not be considered as overstepping the limits of competence. On the contrary, such method of examination would suggest the comprehensiveness, lawfulness and fairness of the carried out investigation. Nevertheless, having carried out the investigation, the commission of academic ethics or another dispute resolution commission of the respective higher education and research institution cannot find violations of the provisions of other legal acts, except for violations of the codes of academic ethics.

In the light of the above, it should be stated that the Applicant who by his actions violated the Rules of Professional Ethics for Internal Auditors, failed to observe the procedures established in the Code of Ethics, has overstepped the limits of competence; thus, breached paragraphs 5.2 and 5.4 of the Code of Ethics.

² Here and hereinafter underlined by us.

The information provided to the Ombudsman suggests that the Applicant's actions were appealed against to the Commission of Ethics after the Applicant drew up the draft order of the rector of ŠU dated 20 January 2017 which he was not entitled to draw up. Having evaluated the collected information, by this decision the Commission of Ethics has determined that the Applicant's actions breach "the part of paragraph 2.2.4 of the [Code of Ethics] <...> "where the issue of financing, career of the person himself, family member or another related person, imposition of a penalty or provision of incentives believing that the decision may be biased".

It is to be noted that paragraph 2.2.4 of the Code of Ethics which was in force at the moment of adoption of 29 November 2017 decision of the Commission of Ethics set forth the additional condition not mentioned by the Commission of Ethics in the decision, i.e. paragraph 2.2.4 sets forth the duty "**not to exercise the voting right** where the issue of financing, career of the person himself, family member or another related person, imposition of a penalty or provision of incentives believing that the decision may be biased".

In the given case, the Applicant unlawfully drew up the draft order of the rector he was not entitled to draw up but failed to exercise the voting right; therefore, when adopting the decision, the Commission of Ethics broadly evaluated the rule of the Code of Conduct, improperly treated the possible violation of academic ethics and unreasonably applied paragraph 2.2.4.

In the light of the above, it should be stated that the Commission of Ethics acted negligently, failed to ensure proper implementation of the principles of academic ethics, therefore, breached paragraph 2 of Article 4 of the LHER by the part which provides for that academic ethics shall mean the generally recognised values ensuring transparency, good faith, fairness, responsibility and trust as a whole.

Attention should also be paid to paragraph 1.2 of the decision adopted by the Commission of Ethics which provides for that:

"1.2. The letter of the rector's reply [to the employee] states that "due to the changed circumstances, the procedure for drawing up and consideration of the order was lengthy; therefore, possibly some non-conformities or inaccuracies occurred and "the [manager] should not draw up the draft operational orders".

It is to be noted that, in addition to the afore-mentioned circumstances, the rector in his letter set out other circumstances not mentioned by the Commission of Ethics in its decision. The rector's letter sets out such circumstances as "changes in the heads of the service of administration affairs and the fact that the head who is no longer employed could not be included", "when drawing up the draft, the coefficients of the official salaries were coordinated with prorectors and other employees", "the final decision was taken by the Rector", "the order was draw up for regulation of the coefficients of the salaries of several employees but not on the initiative of the [director] of the <...> service". Such selective unreasoned reference to the respective circumstances without specifying other circumstances should be critically assessed as rebutting the completeness and comprehensiveness of the investigation carried out by the Commission of Ethics.

It is to be noted that in order to recognise and uphold the values of academic ethics provided for in paragraph 2 of Article 4 of the LHER which sets forth that "academic ethics shall mean the

generally recognised values ensuring transparency, good faith, fairness of higher education and research process, equality, non-discrimination, responsibility of the persons involved in the process, sustainable use of resources, academic freedom, impartiality in evaluation of scientific and study works, trust, respect and protection of intellectual property as a whole” the members of the academic community should disclose information on other members of academic community in a responsible manner and shall not misuse the rights granted to them.

Having analysed and evaluated the provided information and the supporting documents and legal regulation and following subparagraphs 1 and 3 of paragraph 11 of Article 17 of the Republic of Lithuania Law on Higher Education and Research, the Ombudsman

has decided the following:

1. To notify the Applicant, Šiauliai University, the Ministry of Education and Science of the Republic of Lithuania and the Commission of Ethics of Employees and Students of Šiauliai University of the committed violations of academic ethics and procedures.

2. To recommend to the Commission of Ethics of Employees and Students of Šiauliai University to cancel 29 November 2017 decision.

The decision of the Ombudsman may be appealed against in accordance with the procedure prescribed in the Republic of Lithuania Law on Administrative Proceedings.

Ombudsperson for Children's Rights

Acting Ombudsman for Academic Ethics and Procedures

Edita Žiobienė